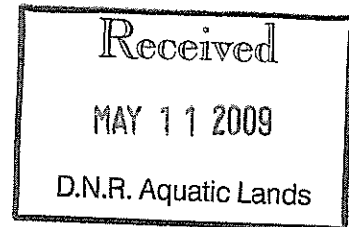


BP Cherry Point Refinery
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Telephone 360 371-1500



May 6, 2009

Mr. David Palazzi
Aquatic Resources Planning Unit Supervisor
Washington State Department of Natural Resources
PO Box 47027
Olympia, WA 98504-7027

Dear Mr. Palazzi,

The BP Cherry Point Refinery appreciates the opportunity to comment on the current Draft Cherry Point Management Plan. As you are aware, BP has been a participant in the Cherry Point Workgroup that has, for nearly two years, worked towards the goal of developing an alternative to Aquatic Reserve designation for the Cherry Point Reach. Having participated in this process, BP recognizes the significant effort associated with the development of this Draft and further recognizes the significant changes in content and format between this Draft and previous versions.

In response to your request for comment on the current Draft Cherry Point Management Plan, BP refers DNR to the detailed comments provided in response to the previous Draft of the Management Plan. Those comments included detailed technical edits as well as programmatic and organizational input intended to increase the scientific validity of the Management Plan and ensure the Management Plan accurately reflects the historical and current industrial activities along the reach. In reviewing this most recent Draft we find that the clear majority of our earlier comments, including the correction of erroneous information, were disregarded. We strongly encourage DNR to thoroughly review our previous input and incorporate the comments and corrections previously submitted.

BP looks forward to seeing incorporation of its input into the next Draft of the Management Plan, which we understand will be released for public comment as part of the formal SEPA process. We will reserve further detailed comment on much of the content of the Management Plan until that time; however, there are several key issues which warrant specific attention now.

With regard to the overall purpose and need for a Cherry Point Management Plan, BP continues to assert that the stated goals of the Cherry Point Aquatic Reserve and the implementation of those goals as outlined in the Draft Management Plan are inconsistent with the long-standing state and local designation of the Cherry Point Management Area for heavy industrial use under the Whatcom County Shoreline Management Program (SMP). This designation, and the clearly stated preference for use of the Cherry Point Reach to support water-dependent industrial uses, has been endorsed by the Washington Department of Ecology through their repeated review and approval of the Whatcom County SMP since the adoption of the first Whatcom County SMP in 1976. The inconsistency between this community and state agency-endorsed prioritization for heavy industrial use of the Cherry

Point Reach and DNR's continued efforts to limit and, to some degree, discourage industrial use and development along the Cherry Point Reach remains a specific concern to BP.

BP's position has been clear since long-before the Cherry Point Workgroup was formed: the marine habitats and assemblages of the Cherry Point Reach are important aquatic resources which must be preserved and, where appropriate, enhanced to ensure their long-term sustainability. BP and the other industrial aquatic land leaseholders along the Cherry Point Reach have demonstrated a 30-plus-year history of voluntary and proactive stewardship of the marine resources along our shoreline. Our efforts provide an unparalleled regional, if not national, example of how to conduct water-dependent heavy industrial activities in an environmentally appropriate and sustainable fashion and, as such, should be held up as a benchmark against which other similar sites should be measured.

Section 3 of the Draft Management Plan, Management and Regulatory Framework, reflects a comprehensive web of environmental regulations that currently apply within the Cherry Point Reach. This section of the plan clearly identifies that all necessary and appropriate regulatory controls are currently being enforced to appropriately manage the natural resources at Cherry Point. In the face of these findings, the Management Plan fails to demonstrate that the Cherry Point ecosystem is significantly degraded or at risk of future degradation unless the proposed Management actions are implemented. While Cherry Point aquatic lands are faced with competing use demands, DNR should not artificially create additional conflict over use of the Cherry Point Reach as an historic industrial, commercial fishing and recreational area by using the Aquatic Reserve Program as a tool to further regulate and/or limit use and development.

As a commercial aquatic lands leaseholder along the Cherry Point Reach, BP is particularly concerned by Section 8 of the Draft Management Plan regarding lease management. Specifically, the draft language suggests that re-authorization of existing leases would be predicated on two criteria: 1) being in good financial and contractual standing with DNR, and 2) being in substantial compliance with the conditions of federal, state and local laws and permits. While these two criteria are generally acceptable to BP, it is critically important that the Management Plan further state that if a commercial facility is operated in substantial compliance with the conditions of its Commercial Aquatic Land Lease, that operation is inherently consistent with the goals of the Management Plan. This consistency language is central to DNR's obligation to balance the social, economic and environmental aspects of its trustee role. Additionally, this verbiage is necessary to address conflicting language in the Washington Administrative Code regarding Aquatic Reserves implementation that is perceived by industry as a threat to re-authorization of our commercial aquatic land leases. BP does not envision supporting any iteration of the Cherry Point Management Plan that does not include this consistency determination.

BP is also concerned about other language included at the beginning of Section 8 and reiterated under the sub-section addressing re-authorization of existing leases. That language suggests that lease re-authorization would, in addition to the criteria noted above, be further subject to conditions based on ambiguous research and monitoring findings and presumed environmental impacts. BP opposes ambiguous language of this nature and is particularly concerned by the lack of any reference to causal links between future research or monitoring findings and our commercial activities. Likewise, DNR references the imposition of future lease conditions to address a reduction of wastewater discharges; however, no studies have been conducted which indicate that BP's wastewater discharges are associated with any identified environmental impacts. To the contrary, detailed scientific studies have demonstrated that BP's wastewater discharges, which are specifically permitted by the


Washington Department of Ecology, have not been linked to declines in the Cherry Point herring stock. While BP recognizes that the terms and conditions of future lease re-authorization will be predicated on the best available science at the time, there should be no presumption of future environmental impacts stated in the Management Plan and any future terms and conditions should be based only on broadly accepted, peer-reviewed research findings.

Additionally, with respect to approval of facility modifications or expansions, Section 8 of the Draft Management Plan indicates that one of the criteria for evaluation of such proposals includes consideration of an applicant's willingness to implement voluntary actions related to their existing operations. Inclusion of such considerations for approval of future facility modifications and/or expansions seem inappropriate and inconsistent with the legal framework associated with regulatory decision making processes and should be removed from the plan.

Further, the lease re-authorization provisions outlined in Section 8 of the Draft Management Plan indicate that DNR will be seeking programmatic improvements to all authorized uses over time to address endangered species protection. Similar to the concerns expressed above this section is ambiguous and creates an atmosphere of uncertainty regarding DNR's commitment to long-term operation of the existing industrial facilities in the Cherry Point Reach. As previously stated, the regulatory analysis prepared in support of the Draft Management Plan identifies that sufficient regulations are in effect to protect the resources present in the Cherry Point Reach and such provisions will only serve to create unnecessary duplication, redundancy and confusion.

BP recently celebrated its 100th anniversary and intends to continue to be a productive and responsible economic and environmental leader in Washington State for many years to come. We look forward to continuing our stewardship efforts along the Cherry Point Reach and will engage fully in the upcoming SEPA process.

Best Regards,



Jeff Pitzer
Business Unit Leader

cc: Mr. Peter Goldmark, DNR Public Lands Commissioner
Mr. David Roberts, DNR